

INTERLOCAL AGREEMENT REGARDING THE DISTRIBUTION
OF FUNDS FOR A PERFORMING ARTS CENTER

THIS INTERLOCAL AGREEMENT (this "Agreement"), is entered into as of this _____ day of May, 2009, between the CITY OF LAS VEGAS, NEVADA, (the "City") a political subdivision of the State of Nevada and City of Las Vegas Redevelopment Agency ("RDA"), a Public Body, in the State of Nevada:

WITNESSETH:

WHEREAS, the City the has entered into an agreement with the Las Vegas Performing Arts Center Foundation concerning the financing of the acquisition, improvement, equipment, operation, and maintenance of a performing arts center within the Union Park Master Planned Development; and

WHEREAS, the City of Las Vegas Redevelopment Agency (the "Agency") adopted on March 5, 1986, that plan of redevelopment entitled, to-wit: the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area pursuant to Ordinance 3218, which Redevelopment Plan has been subsequently amended on February 3, 1988, by Ordinance 3339; April 11, 1992, by Ordinance 3637, on November 4, 1996, by Ordinance 4036, on December 17, 2003, by Ordinance 5652 and on May 17, 2006, by Ordinance 5830 (the "Redevelopment Plan"); and

WHEREAS, NRS 279.486 permits an agency, with the consent of the city council, to pay all or a part of the value of land for the cost of the construction of any building, facility, structure or other improvement and the installation of any improvement which is publicly or privately owned within or without the redevelopment agency; and;

WHEREAS, NRS 279.468 requires that before the city council gives its consent as provided in the preceding preamble, the governing body is required to determine that the buildings, facilities, structures or other improvements are of benefit to the redevelopment area or the immediate neighborhood in which the redevelopment area is located and no other reasonable means of financing those buildings, facilities, structures or other improvements are available; and

WHEREAS, NRS 277.180(1) provides in part that "Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform"; and

WHEREAS, the City intends to construct a performing arts center to be known as The Fred W. and Mary B. Smith for the Performing Arts (the "Smith Center") which will be located in Union Park in downtown Las Vegas; and

WHEREAS, the RDA has issued bonds to be used, among other things, for the construction of a performing arts center project in the city of Las Vegas (the "RDA Tax Increment Revenue Bond, Series 2009A"); and

WHEREAS, the RDA desires and is able to provide the additional funding to fund the construction of the Smith Center which funding shall not exceed Seventy Six Million Seven Hundred Eighty Thousand Dollars (\$76,780,000).

NOW, THEREFORE, in consideration of the mutual covenants of good faith and promises by and among the Parties set forth hereinafter, it is agreed as follows:

1. The City and the RDA acknowledge and agree that the construction of the Smith Center shall be from three sources of funds: (a.). Rental Car Tax Bond Revenues; (b.). Reynolds Foundation Grant Funds; and (c.). RDA Tax Increment Revenue Bonds, Series 2009A ("RDA Bond Funds"). In addition, the RDA shall provide funds to the City in an amount not to exceed \$8,000,000 ("RDA Funds") as the City's contribution ("City Construction Contingency Amount") to the Construction Contingency Fund as more specifically set forth in the Second Amended and Restated Agreement to Design, Construct and Lease a Performing Arts Center dated May 6, 2009 between the City, City Parkway V, Inc. and the Las Vegas Performing Arts Center Foundation ("Design and Construction Agreement"). The RDA shall provide the RDA Bond Funds and RDA Funds in a total amount not to exceed Seventy-Six Million Seven Hundred Eighty Million Dollars (\$76,780,000) ("RDA Amount") to the City for the construction of the Smith Center.
2. The City will reimburse the RDA a sum not to exceed Twenty Eight Million Dollars (\$28,000,000) from any Excess Rental Car Tax Revenue which it receives pursuant to NRS 244A.360 and the Amended and Restated Interlocal Agreement dated June 1, 2006 between the City and the Clark County and subject to terms of the Lease and Operating Agreement between the City and Las Vegas Performing Arts Center Foundation ("LOA"). This repayment shall be completed no later than September 6th, 2030.
3. In the event the Construction Contingency Fund is not used or the funds are only partially expended and the construction contract for the Smith Center is completed, the balance of the Construction Contingency Fund shall be released and the RDA shall be reimbursed for its contribution to the City for the City Construction Contingency Amount. As set forth in the Design and Construction Agreement, Three Million Dollars (\$3,000,000) of the City Construction Contingency Amount to the Construction Contingency Fund shall be replaced with Las Vegas Performing Arts Foundation (PAC) funds within six (6) months from the start date of the commencement of construction of the Smith Center. In the event that the City Construction Contingency Amount are expended in whole or in part during construction of the Smith Center, the RDA Funds shall be refunded to the RDA from the Excess Rental Car Tax Revenue on a quarterly basis subject to the terms of the LOA.
4. Twenty Million dollars (\$20,000,000) from the RDA Bond Funds will be used for the construction of the Primary Theater Project as that term is defined in the Design

and Construction Agreement. This \$20,000,000 will also be refunded to the RDA from the Excess Rental Car Tax Revenue subject to the terms of the LOA.

5. This Agreement is for the benefit of the Parties only and for the benefit of the owners of the Bonds or other bonds described above. No person or entity is intended to ever be a third party beneficiary of this Agreement except the owners of the Bonds and such other bonds.
6. If either Party fails to make any payment due hereunder at times specified herein, or either Party fails to abide by the provisions of this Agreement, this Agreement may be enforced by the other Party hereto in a court of competent jurisdiction to enforce the provisions of this Agreement, for damages or to obtain any other remedy that may be available in law or in equity, including specific performance of the provisions of this Agreement. The provisions of this Section are not intended as a limitation on the remedies that may be available in case of breach of this Agreement.
7. No failure or delay on the part of any Party to this Agreement to enforce the provisions hereof shall operate as a waiver thereof, nor shall a single or partial enforcement of any provision hereof preclude any other or further enforcement or exercise of any other right, power or remedy that any party of this Agreement may have.
8. Time is of the essence to this Agreement. Each Party agrees that it shall perform all of its obligations under this Agreement promptly when required.
9. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and their assigns. No assignment of this Agreement or any right or obligation hereunder by any of the Parties shall be valid unless the other Party consents to that assignment in writing.
10. This Agreement may be modified at any time by the Parties, but only by a written instrument signed by each of the Parties.
11. If any provision of this Agreement is deemed to be invalid or unenforceable, the invalidity or unenforceability shall not affect the remaining provisions of this Agreement that can be given effect without the invalid or unenforceable provision, and the Parties agree to replace the invalid or unenforceable provision with a valid provision which has as nearly as possible the same effect.
12. This Agreement may be executed in one or more counterparts, each of which shall be regarded as the original and all of which shall constitute the same agreement.
13. By approving and executing this agreement the City is Authorizing and Consenting to undertakings of the RDA and finding that these actions are in compliance with and furtherance of the Redevelopment Plan

